THE MALTA TRIBUNALS

(MALTA YARGILAMALARI)

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Abstract: *There is no national or international court ruling characterizing the 1915 events as genocide. On the contrary, there is an international court ruling in hand which refutes the genocide claims. By the end of the First World War, 144 Ottoman officials were arrested by the British on the grounds that they had "perpetrated mass killings against Armenians," and a legal investigation was initiated on Malta conducted by Britain's highest legal prosecution authority, the Crown Prosecution Service (CPS) in London. Despite the British government's every effort to try and sentence the Turkish detainees on Malta, the CPS inquiry resulted in no charges being filed, on the grounds that "it was unlikely that such charges could be proven in a British court of law." The Malta Tribunals, with their judicial and historical findings that refute the Armenian genocide claims as a whole, constitute an important chapter in our history. Yet it is a chapter that we have forgotten and were made to forget.*

Keywords: *UN 1948 Genocide Convention, Ottoman Tribunals, Malta Tribunals, Crown Prosecution Service, Sevres Treaty*

Öz: *1915 olaylarını soykırım olarak nitelendiren ulusal veye uluslararası bir mahkeme kararı bulunmuyor. Tam aksine, soykırım iddialarını çürüten bir uluslararası mahkeme kararı vardır. Birinci Dünya Savaşı sonu itibariyle, 144 Osmanlı görevlisi İngilizlerce "Ermenilere yönelik toplum katliamlar" yapmak suçlamasıyla tutuklanmış ve Malta'da Britanya'nın en yüksek hukuki otoritesi olan Londra'daki İngiliz Kraliyet Başsavcılığı'nca bir soruşturma yürütülmüştür. İngiliz hükümetinin Malta'daki Türk tutukluları yargımaka ve mahkum ettirebilmek için verdiği tüm uğraşlara ragmen, İngiliz Kraliyet Başsavcılığı'nın yürüttüğü soruşturma "bir İngiliz mahkemesi önünde bu tür suçlamaların kanıtlanması mümkün değildir" gerekçesiyle hiçbir suçlama yapılmadan sonuçlanmıştır. Ermeni soykırımı iddialarını hukuki ve tarihi açıdan tamamıyle çürüten bulguları ile Malta yargılamaları tarihimizde çok önemli bir yer tutmaktadır. Ancak bu ya unuttuğumuz ya da bize unutturulmuş bir olaydır.*

Anahtar Kelimeler: *BM 1948 Soykırım Sözleşmesi, Osmanlı Yargılamaları, Malta Yargılamaları, İngiliz Kraliyet Başsavcılığı, Sevr Anlaşması*

The Crime of Genocide and the Reality of Malta

The Island of Malta is imprinted in our minds as a story of exile. However, this is untrue. What took place on Malta was a trial.

After the First World War, the British arrested 145 Ottoman officials, the majority of them Unionists (*members or sympathizers of the Committee of Union and Progress)* and sent them to Malta. The objective was "*to try and sentence the Turks."*[1]

A judicial investigation was opened into the Unionists, who were detained on Malta for more than two years, to look into the accusation of *"mass killing of Armenians."*[2] The investigation was conducted by the British CPS in London.

The prosecution's investigation was based on Articles 230 and 231 of the Treaty of Sèvres on "Armenian massacre" allegations[3]. Along with the Ottoman archives transported to London after being seized during the invasion, every document deemed to be in America was examined, [4] and proof of the "Armenian massacre" was sought in Egypt, Iraq, and Caucasia. Despite all these efforts, no evidence was found that a British court would consider sufficient proof.

Consequently, the British Foreign Ministry asked the prosecution to "*initiate political charges"* [5] against the Turks on Malta, *"if judicial ones cannot be initiated,"* but failed to convince the prosecution. The British CPS, in a document dated 29 July 1921, announced without question to the British government that, with the "*evidence in hand*" none of the Turks on Malta could be prosecuted on the grounds of the Armenian massacre. [6]

Thus, the British government had to release the Turks being held on Malta.[7]

1 FO 371/4172:Cypher telegram from the Foreign Ministry to Admiral Calthorpe, British Hıgh Commissioner at Constantionople, very urgent No. 33, London, 05.02.1919

2 FO 371.4174.129560: CPS report dated 07.08.1919 enclosed in a letter from British FM to British Chief Prosecutor. No. 1270 of 10.07.1919

3 *Bilal Şimşir*, *Malta Sürgünleri*, (Ankara: Bilgi Yayınevi, 1985-2. edition), pp. 213-214 (Malta Deportees)

4 FO 371/6504/E.8519:- Letter from Craigie, British Charge d'Affaires at Washington to Lord Curzon, No. 722 of 13.07.1921

5 FO 371/6502/E.5845: FM's letter to His Majesty's Procurator-General's Department, 31.05.1921

6 FO 371/6504/E.8745: From Dept. of H.M. Procurator General to Under Secretary of State, Foreign Office, 29.07.1921

7 FO 371/6504/E.10662: Telegram from Curzon to Rumbold. Tel. No. 539 0f 27.09.1921 - FO 371/6505/E.10870: Telegram from Rumbold to Curzon.Tel. 639 of 29.09.1921 – FO 371/6505/E.11011: Telegram from Rumbold to Curzon. Tel. No 645 of 04.10.1921 - FO 371/6505: From Plummer to War Ministry, No.4133(A) of 29.10.1921

Malta refers to a prosecution process during which the "Armenian genocide" (a current term) allegations were investigated. This prosecutorial process on Malta shares an international judicial atmosphere similar to that of the Nuremberg Tribunals, the trial concerning the Holocaust after the Second World War. The Malta investigations were conducted in order to establish a court similar to the "international court" later formed in Nuremberg to put Germans on trial for the Holocaust, if the process had not been halted due to lack of evidence.[8]

The establishment phase of the international court where the unionists were supposed to be put on trial was also discussed by the League of Nations, the post-First World War predecessor to the United Nations. During its sessions, among the topics that were discussed were the methods to use to establish a court[9] which would carry out such prosecutions and an "Advisory Board" was formed for this purpose.[10]

The Malta investigations were conducted in order to establish a court similar to the "international court" later formed in Nuremberg to put Germans on trial for the Holocaust, if the process had not been halted due to lack of evidence.

These preparations were not realized, as the CPS declared that no charges could be filed due to a "lack of evidence" and announced that no penal action could be taken even if charges were filed. The CPS's decision to dismiss the Armenian massacre accusations for "lack of evidence" corresponds in modern law to a "dismissal."

It goes without saying that the judicial conclusions of the Malta Tribunals completely refute the "Armenian genocide" allegations. According to UN's 1948 Genocide Convention, in order for an incident to be considered genocide, a court ruling is required.

There is no national or international court ruling characterizing the 1915 events as genocide. However, there is a court ruling declaring the opposite, a court ruling saying that no massacre that can be defined as genocide took place. As the prosecution's inquiry constitutes the first step of a legal procedure, we therefore have in hand a judgment stating that the Armenian genocide does not exist. This judgment is the Malta Tribunals, commonly known to Turks as the "Malta exile," which the CPS declared dismissed.[11]

8 Uluç Gürkan, *Ermeni Sorunu'nun Anlamak*, (İstanbul: Destek Yayınları, 2012-2.baskı) p. 83-85 (Understanding the Armenian Question)

9 New York Times, *"League invites Wilson to Mediate for Armenians: Root Court Plan modified"*, 26.11.1920, p.1, column 5.

10 Uluç Gürkan, *Malta Yargılaması,* (İstanbul: Kaynak Yayınları, 214) s. 14 (The Malta Tribunals)

11 idem, p. 15

The Malta Tribunals constitute an important chapter in our history. However, it is a chapter that we have forgotten and indeed were made to forget. Remembering these tribunals and embracing their reality will make the Armenian genocide lobby, which at every turn calls on us to "face our history," face the documented realities of history.

British governments seem to have faced this reality.

The British tried to use every opportunity to try and sentence every Turk they arrested for the "killing of local Christian people" during the years of WWI years and afterwards. However, as the country that knows best what happened during these days, they clearly state that the events of 1915-1916 cannot be described as genocide.

In the late 1990s and early 2000s, when Western parliaments were recognizing Armenian genocide claims, the UK was also asked to do the same. British Spokesperson of Foreign and Commonwealth Affairs Baroness Ramsay of Cartvale rejected such demand in a speech dated 14 April 1999 delivered on behalf of the British government:

> "*…in the absence of unequivocal evidence to show that the Ottoman administration took a specific decision to eliminate the Armenians under their control at the time, British governments have not recognised the events of 1915 and 1916 as 'genocide.' ...we do not believe it is the business of governments today to review events of over 80 years ago with a view to pronouncing on them… These are matters of legal and historical debate.*" [12]

Despite this statement, the Armenian genocide lobby has maintained its pressure on the UK, ultimately resulting in the Armenian genocide allegations being addressed during a Holocaust commemoration ceremony held in London on 27 January 2001.

In a press conference held in Ankara on 22 January 2001, Britain's Beverley Hughes, then parliamentary under-secretary of state in the department of the environment, transport and the regions, stated that only the Holocaust would be addressed during the ceremony[13] and made the following declaration in Istanbul:

12 http://www.publications.parliament.uk/pa/ld199899/ldhansrd/vo990414/text/90414-09.htm

13 Milliyet, 23 January 2001

"*A while ago, the British government reviewed evidence put forth on the Armenian allegations and examined documents on the events of 1915-1916. The decision is that these events do not correspond to what is defined as genocide by the UN. This is the attitude of the British government, and this will never change."*[14]

In a response to a question on this matter, the then Parliamentary Under-Secratery of State at the Foreign and Commonwealth Office Baroness Scotland told the House of Lords on 7 February 2001:

"The Government, in line with previous British Governments, have judged the evidence relating to events in eastern Anatolia in 1915-1916 not to be sufficiently unequivocal to persuade us that these events should be categorized as genocide as defined by the 1948 United Nations Convention on Genocide."[15]

The UN Convention on Genocide

Genocide is an international crime as described in the 1948 United Nations Convention on Genocide.[16]

The definition of the crime is given in Article 2 of this 19-article convention as follows: *"Acts of killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group"* committed "*with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."*

This definition is binding. Its scope or meaning can neither be expanded upon nor narrowed arbitrarily.

Besides the commission of such acts, to be entirely clear, the existence of the material element alone is not sufficient for the crime to occur. In addition to the material element, the moral element has to be present as well. This moral element makes the crime of genocide very special.

14 Hürriyet Daily, 25 January 2001

15 "Letter dated 29 June 2001 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General" United Nations General Assembly, Security Council http://www.un.org/documents/ga/docs/55/a551008.pdf

16 Full text in Turkish: http://www.tbmm.gov.tr/komisyon/insanhaklari/pdf01/33-36.pdf

The moral element of the crime is the intent to "*destroy a national, ethnical, racial or religious group."* This is a special intent. *"Beyond the intent of killing, the acts have to be committed with the intent to destroy a group."*[17]

In the literature of law, the special intent called *dolus specialis* is necessarily sought in genocide accusations. Articles 187, 188 and 189 of the International Court of Justice's Bosnia ruling explicitly state *"a separate notional element must be present"* in order to define an act as genocide. This notional element is also present in the International Criminal Tribunal for the former Yugoslavia's (ICTY) Kupreskic case as *"the need for the presence of intent to destroy, in whole or in part, a group*." [18]

According to the UN Convention on Genocide, which defines the crime of genocide and establishes its legal framework, real persons – not legal ones – should also be charged with such crimes.

Forcing a group to migrate and related deaths are not sufficient for the crime of genocide to occur, according to international courts. For example, in its Krstic ruling, the Yugoslavia War Crimes Appeal Court ruled that the forced migration of women, children and elderly people of Srebenica, although doing so bears a high risk of critical casualties, cannot be considered as genocide but instead an element that should be considered as part of the whole. This view was also confirmed in the Blagojevic decision.

According to the UN Convention on Genocide, which defines the crime of genocide and establishes its legal framework, real persons – not legal ones – should also be charged with such crimes. Articles 3 and 4 of the convention on *"punishable acts"* are related to the individual criminal responsibility for the crime of genocide.

Despite this judicial reality, "Armenian genocide" accusations are usually levelled at Turkey and the Turkish people, rather than real persons, thereby gaining a quality of "hate speech."[19]

Both the timing and reasons for turning the "genocide" allegations into some sort of hate speech against Turkey are notable. The Armenian genocide allegations gained new momentum in the 1990s, with the collapse of the Soviet system and the end of the Cold War. They gained a new international

17 Pulat Tacar, *Doğu Perinçek-İsviçre Davası,* (İstanbul: Kaynak Yayınları, 2002) p. 99 (Doğu Perinçek-Switzerland Case)

18 *idem,* p. 99-100

19 *Ermeni Sorunu'nu Anlamak*, p. 14 (Understanding the Armenian Question)

dimension, incorporated in the "New World Order" shaped around the *"Clash of Civilizations"* where Samuel Huntington emphasizes religious differences. Thus they have become part of contemporary politics rather than a historical issue. [20]

Another important element distinguishing the crime of genocide from other crimes is establishing, through competent courts and appropriate proceedings, the commission of the acts and whether the accused real persons had specific intent while committing them. This element is defined in Article 6 on the *"trial of persons charged with genocide"* as *"by a competent tribunal of the state in the territory of which the act was committed"* and *"an international penal tribunal as may have jurisdiction."*

Another reality that we should recall and relate to the "genocide lobby" is that more than 1,000 people accused of harming the Armenians during the deportations of 1915 were tried and sentenced by the Ottoman Courts-Martial after the First World War.

While the CPS's investigation on Malta corresponds to the UN Genocide Convention's "*international penal tribunal as may have jurisdiction"* criteria, the Ottoman 1915 Courts-Martial fulfill the quality of "*a competent tribunal of the state in the territory of which the act was committed"* provided for in the UN Genocide Convention.

Documents relating to the Ottoman trials of 1915-1916 and Malta trials of 1919-1921 should be revealed and not be forgotten on the dusty shelves of history. These documents have judicial findings that completely refute the "Armenian genocide" allegations. [21]

Discrediting Malta

The "genocide lobby" realizes that the Malta Tribunals are the beginning of the end for the genocide allegations. This is why the lobby is making great effort to discredit them. The aim is to create the illusion that Malta did not entail actual legal proceedings. They take recourse to a series of historic and legal falsehoods:

- The Malta proceedings were nothing but a show. The actual goal was an "exchange of captives."

20 *Idem, p*. 45-47

21 Malta Yargılaması, ss. 20-21 (The Malta Tribunals)

- As the liberation movement in Anatolia gained strength, the British gave up on Malta.
- No charges were filed, and the international court provided for in Sèvres was not established.
- Sèvres was never entered into force and with the signing of Lausanne, the Malta proceedings were abandoned.
- The investigations carried out on Malta were not about "genocide." Therefore the judgment cannot constitute a reference against "genocide" allegations.[22]

Exchange of captives

Allegations suggesting that the Malta Tribunals were not taken seriously by the British, as they rather considered them a "captive exchange project," are wholly unconvincing. Proceedings conducted over an "Armenian massacre" are documented in the British archives. Despite that, the "genocide" lobby shamelessly falsifies Malta.

The Malta Tribunals did not end with an exchange of captives. On the contrary, they ended with a "dismissal" declared by the British CPS, and the exchange of captives issue arose thereafter. The British did not include the Turks on Malta who were deemed "arrested" until the declaration of the "dismissal," and especially those accused with the "Armenian genocide" in this exchange of captives.

It is true that an exchange of captives agreement was signed in London on 16 March 1921 between Bekir Sami Bey, the foreign minister of the Grand National Assembly government which led the War of Independence in Anatolia, and the government of Britain. However, not all the Turks held on Malta fall within the scope of this agreement. The scope of the envisaged captive exchange was the release of all British captives by the Turks in exchange for "*the return of the Turks who have not harmed or abused Armenians or British captives*," by the British.

The British organized the Conference of London with their allies when they were compelled to accept the War of Independence under Mustafa Kemal's leadership and the government of the Grand National Assembly, after the First

22 *Idem,* s. 112

İnönü Victory of January 1921. The aim here was to partially soften the Sèvres agreement and convince Ankara to accept it.

It was after the Conference of London that Bekir Sami Bey signed the captive exchange agreement, but Ankara did not ratify the softened Sèvres or the limited-scope captive exchange agreement signed by Bekir Sami Bey, who then was dismissed from his duty as FM.

The detention of Turks on Malta on the grounds of an Armenian massacre ended with the CPS's declaration of dismissal of "Armenian massacre" allegations due to the absence of evidence on 29 July 1921. Therefore, the release of Turks whose "detention" turned into "political captivity" is documented in the British archives.[23]

Upon the dismissal declaration by the CPS, British Foreign Minister Lord Curzon sent a memo on 10 August 1921 to Sir Horace Rumbold, Britain's high commissioner in İstanbul, mentioning *"the obligation to make a general agreement*."[24] The response of the high commissioner can be summarized as follows: "*Since no adequate evidence was found to convince a British Court of Law, all Turks should be included in the exchange of captives to avoid losing more reputation."*[25]

Thus began the negotiations for exchange which ultimately led to an agreement.

The Struggle for Independence

Another falsification aimed at discrediting the Malta Tribunals suggests that British attempts to reconcile with the National Struggle movement influenced the CPS' dismissal. Such falsification does not reject the proceedings which took place on Malta but attempts to discredit them by giving them a political character, which is at odds with historical reality.

The CPS declared its dismissal decision regarding the "Armenian massacre" on July 29, 1921, a time when the national liberation movement was weak. The Greek Army had captured Kütahya and Eskişehir on July 17 and 19 respectively which led to the retreat of the national liberation forces to the east of the Sakarya River. The sound of Greek shells targeting Polatlı were heard

23 *Idem, p*. 112-114

24 FO 371/6504/E.8745: Telegram from FM to Rumbold. Tel. No 851 of 08.10. 1921

25 FO 371/6504/E.10023: From Harrington to Rumbold, 08.24. 1921

from Ankara, and there were debates over relocating the Grand National Assembly (Parliament) from Ankara to Kayseri.

Britain had no initiative for reconciling with Ankara which would affect the CPS. On the contrary, the British government was dreaming of dealing a deadly blow to Ankara.[26]

The National Independence Movement's recovery and establishing a balance with the Greek forces took place two months after the CPS's decision to dismiss.

A Non-Established Court

Those seeking to discredit the Malta Tribunals argue that no competent international court was established as required by the Treaty of Sèvres and therefore no proceedings took place in line with the UN Convention on Genocide.

It is true that no court was established, because there was no need for it.

It is not that proceedings weren't conducted on Malta due to the lack of a court. The proceedings actually started upon completion of the legal investigation, but no charges were filed, which means no "prosecution" before a court was initiated.

The reason is that, by the end of the CPS-led investigation which constituted the first phase of the proceedings, no evidence suggesting *"the mass killing"* of Armenians and Christian Ottoman citizens was found, which would lead to "*filing charges in a court of law."* Thus the dismissal decision and dismissal of the "Armenian massacre" accusations led to the case being closed.

It is known that if any evidence capable of proof was found, charges would have been filed and a trial would have been carried out by an international court designated by the League of Nations. This is why the establishment of such a court was among the topics discussed by the League of Nations.[27]

26 *Malta Yargılaması*, p. 115 (The Malta Tribunals)

27 İdem*, p.* 116-117

Remission by Lausanne

The Malta falsification that the "Armenian genocide" lobby relies on the most is as follows: *"Since Sèvres never went into force, with the signing of Lausanne, the Malta proceedings were granted amnesty and closed."*

It is true that Ottoman Sultan Vahdettin didn't sign Sèvres, despite its signature by the Turkish side. However, this does not mean that it didn't go into force. First of all, the invasion led by the British and allies was in line with Sèvres' map. Likewise, the justification for the illegal invasion of Istanbul came from Sèvres.

Saying that the Malta proceedings were granted amnesty by Lausanne is a time travel trick mocking human intelligence.

The Malta proceedings came to an end on July 29, 1921, and Lausanne was signed two years later, on July 24, 1923. At that time, no proceeding existed that could be linked to Malta. The files were closed and archived.

The most important agent of this time travel between Lausanne and Malta is renowned British genocide law specialist Geoffrey Robertson. In a report entitled "*Was there an Armenian genocide?*" presented to the British Parliament in October 2009, Robertson writes that the CPS investigation initiated on Malta after WWI into the "Armenian massacre" "*was closed with the establishment of the new Turkish Republic under the leadership of Ataturk, and therefore is of no judicial value."*[28]

Written by Robertson in exchange for money from the Armenian diaspora, this report aims to make the British Parliament accept the "genocide" allegations. Believing that the failure of British governments and Parliament to make a move in this regard is due to their sensitivity to the Malta Tribunals, the "genocide" lobby attempted to overcome this problem through Robertson's work.[29]

Reference to Genocide

The last falsification of the "Armenian genocide" lobby targeting Malta suggests, *"The Malta proceedings did not include genocide, as at that time such a crime had not yet been defined. Therefore, the CPS decision cannot*

28 Full text: http://groong.usc.edu/Geoffrey-Robertson-QC-Genocide.pdf

29 *Malta Yargılaması*, p. 118 (The Malta Tribunals)

constitute a judicial reference today as to the nullity of the Armenian genocide claims."

Such an allegation is contradictory. If the Malta proceedings are to be declared null and void on the grounds that no such "genocide" definition existed at that time, such an accusation also cannot be done today using the contemporary notion of "genocide," for the events took place at a time when no such notion existed.

It means practicing double standards to reject the Malta Tribunals' judicial findings today and attempting to apply the contemporary crime of "genocide" to the past. This is the result of a sick political culture. Besides, no matter what theoretical judicial reasons are used to defend it, it is not in line with the realities of life.

If the Malta proceedings are to be declared null and void on the grounds that no such "genocide" definition existed at that time, such an accusation also cannot be done today using the contemporary notion of "genocide," for the events took place at a time when no such notion existed.

International Jurisdiction

Although pressures to impose the "Armenian genocide" allegations as an "undeniable reality" have been reflected in the court rulings of several foreign countries, they remained ineffective on international judicial authorities such as the International Court of Justice (ICJ), European Court of Justice (ECJ), European Court of Human Rights (ECtHR), and the French Constitutional Council.

The ECtHR and the French Constitutional Council ruled that a law forbidding declaration of the *"non-existence of the Armenian genocide"* and related penalties violate the right to *"freedom of expression."* The ECJ ruled that parliamentary decisions recognizing "the Armenian genocide" are of *"a political nature and can produce no judicial outcome."* As for the ICJ, it points out that *"proceedings initiated by local courts in foreign countries against others are in violation of international law."*

It is no coincidence that the decisions of international judicial authorities are in line with Turkey's position on "genocide." Such decisions mean that historic and judicial realities do not confirm the "genocide" allegations.

ECtHR Decision[30]

In its Perinçek-Switzerland decision of December 17, 2013, the ECtHR ruled that the condemnation of Doğu Perinçek by Swiss courts on the grounds of his remarks suggesting that "*the treatment of Armenians during WWI cannot be interpreted as genocide"* violated Article 10 of the European Convention of Human Rights on freedom of expression. The clear meaning of this ruling is that *"expressing that the 1915 Armenian deportation is not genocide cannot and will not constitute a basis for condemnation.*"

According to the ECtHR, declaring that *"the Armenian genocide does not exist"* falls under the scope of the freedom of expression and cannot be subject to prosecution.

This ECtHR decision is a clear shield protecting freedom of expression against the insistence that *"the Armenian genocide is an undeniable historical fact,"* thus paving the way for free debate. However, it should not be viewed only within the limited context of freedom of expression. Its meaning and importance go beyond that.

According to the ECtHR:

- The widespread impression created by the "Armenian genocide" lobby that *"there is a general international consensus characterizing the 1915 events as genocide"* is not true. There is no such consensus which would mean "ultimate acceptance" of the "genocide" allegations. Out of a total of 190 states, there are only 20 that recognize the "Armenian genocide."

- Not characterizing the 1915 events as genocide *"does not encourage hatred against Armenians," "nor does it humiliate them."* Therefore, saying that "*the Armenian genocide does not exist"* cannot be an *"abuse of the right to debate."* Likewise, the contrary legal action *"does not mean protecting Armenians."*

- There is a *"common good in debating"* whether the 1915 events are "genocide" or not. Restricting such debate by law is not at a country's discretion, as this would tend to limit the common good.

- "Genocide" is a clearly defined crime which can be proven under clear circumstances. International jurisprudence confirms this. The 34th

30 ECtHR Perinçek-Switzerland decision (Official French and unofficial Turkish): http://www.avim.org.tr/analiz/tr/ AIHM-PERINCEK-ISVICRE-KARARI—RESMI-FRANSIZCA-VE-RESMI-OLMAYAN-TURKCE-METIN-/3066

General Interpretation of the UN Human Right Committee states that "*legal norms penalizing the expression of opinion on historical matters are not in line with the UN Civil and Political Rights Convention."* The relevant convention states that declarations about past events cannot be prohibited, no matter whether they are judged true or false.

- The 1915 events against Armenians are both historically and legally different from the Holocaust. No link can be established between the Ottoman Armenians and German Jews. There is ample evidence recognized by competent international courts proving that genocide was committed in Nazi Germany against Jews. Therefore the Jewish genocide is an undisputable historical fact. However, the "Armenian genocide" claims are open to debate, and there is no court ruling on the issue. It cannot be considered the same way as the Holocaust.

The Constitutional Council of France

On February 27, 2012, the French Constitutional Council rejected the shameful law approved by the French Senate and Chamber of Deputies that criminalized denial of the "Armenian genocide." In its decision, the council stated that *"the law in question violates the 'freedom of expression and communication',"* and underlined that *"the freedoms of thought and expression"* are guaranteed by Articles 18 and 19 of the UN Declaration of Human Rights and Article 10 of the European Convention of Human Rights, which both have roots in the 1789 Declaration of Human Rights.

Allegations of certain ministers, defending the shameful law on behalf of the government in the French Chamber of Deputies and the Senate, suggesting that *"freedom expression can be restricted by the law,"* under paragraph two of Article 10 of the European Convention on Human Rights, were rejected in the Constitutional Council's written opinion.

French law on the "Armenian genocide" allegations is by no means in line with conditions paving the way for restrictions on the freedom of expression by virtue of paragraph two of Article 10 of the European Convention on Human Rights. Moreover, the ECtHR, as confirmed by its Perinçek-Switzerland decision, interprets laws restricting freedom of expression as strictly as possible.

In its decision, the French Constitutional Council also ruled that *"Parliament's request for prosecution for the denial of a crime defined by Parliament itself*

is unconstitutional." It says, "*No parliament can function as a court relating to a crime defined by itself."*[31]

The European Court of Justice (ECJ)

In 2003 and 2004, the ECJ characterized recognition of the "Armenian genocide" by the European Parliament as *"a political measure with no judicial value."* It also ruled that allegations suggesting that Turkey, with recognition of the "genocide," cannot be granted candidate status to the EU "*have no value in terms of international law."*

The decision rejected the plaintiffs' request for compensation on the grounds that both the "genocide" and *"sustained loss"* allegations were not proven. Ultimately, the court ruled that court expenses totaling €30,000 be covered by the plaintiffs.

The rejection of compensation on such grounds established a precedent for cases involving territory and compensation filed against Turkey.

The story of the ECJ case – which we have forgotten, just like the Malta Tribunals, even though it took place recently – is as follows:

Based in Marseille, France, the Association Euro-Arménie and two French citizens of Armenian origin filed a case against the EU Council with the ECJ granting Turkey the status of candidate country on December 10-11, 1999 in Helsinki. The plaintiffs claimed that although the 1915 events were not considered "genocide," *"conferring the status of candidacy to Turkey is in violation of EU law,"* and that with this decision, the EU's decision-making body, the EU Council, had caused them harm.

The plaintiffs, basing their allegations on a June 18, 1987 EU Parliament decision stipulating that Turkey's EU membership *"depends on its recognition of the Armenian genocide,"* argued that the EP's decision is a binding one for the EU and requested "*moral compensation."*

In a December 17, 2003 decision (docket no. T-346/30), the ECJ's Court of First Instance rejected the case. Confirming the ruling, the plaintiffs' subsequent appeal was also rejected in an April 17, 2004 decision (docket no C-18/04P).

31 *Malta Yargılaması*, pp. 128-130 (The Malta Tribunals)

ECJ decisions are binding for EU countries. For non-EU countries, they serve as precedents. Therefore, countries such as France which approve the "Armenian genocide" allegations are clearly violating EU law.[32]

The International Court of Justice (ICJ)

The ICJ in The Hague – the highest judicial body of the UN, competent to hear war crime cases, including genocide – ruled on January 3, 2012: "*Proceedings initiated by local courts against other countries have no judicial value; on the contrary, they are in violation of international law."*

This ruling was made in a case that Turkey was not party to. However, it is also of particular concern to Turkey. It is important to the extent that it prevents Armenians from filing cases on the grounds that they incurred damages in 1915.

The ICJ case that Turkey is compelled to analyze on a legal basis developed as follows:

Germany applied to the ICJ on the grounds that cases filed in Italian local courts for *"crimes against humanity"* during WWII are in violation of the law.

Italy stated in its defense that the cases in question began with applications filed by persons whose right to life was denied by the German state during WWII as well as the relatives of persons who were taken to Germany by force and forced to work without being granted the status of prisoners of war.

The ICJ found in Germany's favor, underlining, "*In crimes against humanity, the act of a one state cannot be subject to proceedings in a different country."*[33]

War Crimes

Although historical and legal realities and international court rulings favor Turkey, unabated "genocide" pressure is still being applied on the country. Turkey is being asked "*to officially apologize"* if not *"to recognize the Armenian genocide."*

32 *idem,* p. 130-131

33 *Idem, p*. 131-133

Furthermore, there are suggestions that the "genocide" claims might be replaced with arguments stressing "crimes against humanity." While some believe that the "genocide" will not be accepted by Turkey, others assert that the events of 1915 cannot be exactly defined as "genocide."

Another reason for abandoning the term "genocide" and referring to it as "crimes against humanity" lies in international court decisions characterizing what happened in Bosnia-Herzegovina as "war crimes" instead of "genocide."

Former Ambassador Pulat Tacar, a prominent Turkish researcher on the genocide issue, has long been drawing attention to this development. "*This move to shift the debate over genocide towards crimes against humanity will be the most important issue we will have to deal with in the future,"* he says.[34]

Developments Abroad

The September 2011 issue of *Middle East Critique* showed one leg of efforts to put the "Armenian genocide" allegations into the category of "crimes against humanity." In an article entitled "Crimes Against Humanity as a Paradigm for International Atrocity Crimes*,"* Prof. William Schabas, an expert on genocide law, proposes putting the events of 1915 into the "crimes against humanity" category.[35]

This proposal represents a sharp shift in opinion for Schabas, who in his 2009 book *Genocide in International Law: The Crimes of Crimes* (Cambridge University Press) included the "Armenian genocide" along with "Jewish, Romani and Rwandan genocides" as the four genocides that the world has witnessed.

Putting aside why he changed his view, could Schabas be right? Could the 1915 events be considered "crimes against humanity" or "war crimes"?

To answer this question properly, we are compelled to briefly review documents to see whether the Ottoman government's decision to deport Armenians was motivated by a "criminal intent."

The deportation decision was taken for "military" and "security" reasons during a period in which successive Armenian riots were taking place,

34 *İdem.* p. 150

35 William A. Schabas, "Crimes Against Humanity as a Paradigm for International Atrocity Crimes," *Middle East Critique*, (Vol. 20, No. 3, 20.11.2011) p. 253-269.

ultimately leading to the invasion of the eastern city of Van. However, although this decision was by no means motivated by criminal intent, several crimes were committed against Armenians during its execution.[36]

Many Ottoman officials and citizens who perpetrated these crimes were sentenced by Ottoman courts in 1915-1916. The chief crimes included: "killing, injury, damage to the properties of Armenians, theft, seizing money or property by force, bribery, pillage and pickpocketing, marriage with Armenian girls without permission, and abuse of power."[37]

These are the crimes perpetrated individually. Among these crimes, "killing" can be associated with crimes against humanity such as murder, mass destruction, exile, torture, or the death penalty based on religious motives. However such an association does not reflect the will of the Ottoman state or government. The act of "killing" does not involve the intent of "mass killing" and is not compatible with the Ottoman Empire's war plans.

Finally, the CPS's July 29, 1921decision to file no charges, along with the decision not to prosecute the Turkish detainees on Malta due to lack of evidence, makes no reference to the existence of a "war crime against humanity." On the contrary, the CPS ruled that there was no proof of "Armenian-Christian massacre" accusations that could be associated with these crimes.

Developments in the Country

The Ottoman, British and American archives clearly explain the reality that the 1915 events can neither be characterized as "genocide" nor "war crimes against humanity," and that they were instead a "war tragedy" involving mutual grievances, as described by renowned historian Prof. Bernard Lewis.[38] Despite this fact, certain self-styled "liberal intellectual" circles in Turkey as well as several "conservative circles" seek to *"put the blame on the leaders of the Union and Progress Party and so end the genocide debate."* They argue that the genocide allegations should not be subjected to such ambiguous arguments

36 Edward J. Ericson*, Ottomans and Armenians,* (New York: Palgrave Macmillan, 2013) p. 161-222

37 Yusuf Sarınay, "Ermeni Tehciri ve Yargılamalar: 1915-1916", *Türk-Ermeni İlişkilerinin Gelişimi ve 1915 Olayları Uluslararası Sempozyumu Bildirileri*, Ankara, 11.23-25. 2005, s. 257-265. *(Armenian deportation and proceedings: 1915-1916," Declarations of International Symposium on the Course of Turco-Armenian relations and 1915 events)*

38 *Le Monde*, January 1, 1994; *Ermeni Sorunu'nu Anlamak,* p. 180 (Understanding the Armenian Question)

as "*The Turks did it, the Ottomans did it"* and instead should focus on the argument that "*Union and Progress did it,"* adding that Union and Progress did not represent the traditional Ottoman order.

This is a trap that no one should fall into, especially conservatives. Likewise, republicans should also avoid a trap *"putting the blame on the Ottomans, so therefore the Republic played no part in this."*

This dream is futile. It is vain to hope to put the blame on the "Unionists" or "Ottoman leaders" rather than "Turks" for the 1915 events and so transform the "genocide" debate into one over "war crimes against humanity."

The fact that the "Armenian genocide" allegations target Turkey's territory and nation is related to the New World Order's plans for religious wars between Muslims and Christians. Under this plan, as long as the New World Order does not change, Turkey will always be a target.[39]

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Furthermore, other accusations of "genocide" or allegations of "crimes against humanity" will be brought up. *Armenian Weekly*, a key US Armenian diaspora media outlet, says, in addition to publishing a related list, that genocide is part of "Turkish culture," and adds:

> *"(...) as a genocider society, Turkey attacks its imaginary enemies and seeks new targets. Armenians who are still living in Turkey are on the top of this list as the remnants of Turkey's last unfinished genocide. Of course, Kurds are also on this list as the next victim of Turkey..."*[40]

What should be done in the face of the lobbing of such "Pontus, Assyrian and even Greek genocide" allegations, along with "Kurdish genocide" allegations? Will Ataturk, İsmet İnönü, Celal Bayar and Fevzi Çakmak be targeted by hiding behind Dersim and "*putting the blame on the Unionist mindset of the Republic"?*

Let us cast off such futile dreams. The "genocide" allegations are completely

39 *Malta Yargılaması*, p. 153 (The Malta Tribunals)

40 Aram Hamparian, *Confronting a Pre-Genocial Turkey,* Armenian Weekly, 02.09. 2012 - http://www.armenianweekly.com/2012/02/09/hamparian-confronting-a-pre-genocidal-turkey

baseless prejudices. The historical roots of this prejudice, based on a hatred known simply as "Turcophobia," are quite old. It is impossible to tackle this scourge by making concessions. The only way to do it is to nullify the "genocide allegations" based on historical and legal realities.[41]

Overcoming Prejudices

Deportation was doubtlessly a painful period for Ottoman Armenians. The deportation, planned as "a military precaution" to head off an Armenian uprising against the Ottoman state with volunteer troops on the battlefield and gangs behind military lines, during the Russian occupation of Eastern Anatolia, created many victims. What happened during this period cannot be considered solely the grief of the Armenians who were harmed. It should be the grief of us all. Pain should be shared and, when required, mourned together.

However, in today's Turkey, efforts to share this pain face two important obstacles.[42]

The first is the way that the sensitivity shown towards non-Turks and Muslims is not shown towards Muslims, either Turkish or Kurdish. However, the Ottoman state was fighting on many fronts and the "human tragedies" of the war should be considered as a whole, without discrimination based on race or religion. The perception of common grief can only be ensured if both Muslim and non-Muslim Ottoman people share their experiences together.

The second is the way the emphasis on tragedies somehow outweighs historical and legal realities. While sharing the pain of the victims of the Armenian deportation is a human necessity, this does not excuse ignoring the historical and legal dimensions of the issue, for "genocide" is a legal notion. Characterizing a historical event as genocide is not something done through personal decisions but only through legal ones. In other words, the acceptance of pain endured does not change the scope of historical realities.

The prejudices constituting both obstacles should be overcome.

Prejudices feed attitudes based on double standards and discrimination. Overcoming prejudices can be achieved through adopting historical and legal realities by abandoning subjective memory patterns that are currently being turned into some sort of fetish of conscience. Historical and legal realities will

41 *Malta Yargılaması*, p. 153 (The Malta Tribunals)

42 *Ermeni Sorunu'nu Anlamak,* pp. 9-10 (Understanding the Armenian Question)

demonstrate the existence of grey areas in everything, instead of simple black and white. As far as the 1915 Armenian deportation is concerned, this grey area will demonstrate that while the legitimate reasons for the deportation do not "legitimize" the pain endured, on the other hand, neither does this pain eliminate the legitimate reasons for deportation.

This is a grey area free of hatred, paving the way for tolerance. Historical and legal realities give us an opportunity to meet on common ground.

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